
**Natural Resources, Ecology &
Parks Committee**

HB 1492

Brief Description: Developing a single pilot mitigation bank on state-owned aquatic lands.

Sponsors: Representatives Williams, B. Sullivan, Eickmeyer and Orcutt; by request of
Commissioner of Public Lands.

Brief Summary of Bill

- Authorizes the Department of Natural Resources to accept money to establish a single pilot mitigation bank on state-owned aquatic lands and to sell mitigation bank credits.

Hearing Date: 2/1/05

Staff: Jason Callahan (786-7117).

Background:

The Legislature has delegated to the Department of Natural Resources (DNR) the responsibility for managing the state's aquatic lands for the benefit of the public (RCW 79.90.450). The management of aquatic lands must support a balance of goals, including the encouragement of public access, the fostering of water-dependent uses, the utilization of renewable resources, and the generation of revenue (RCW 79.90.455). Revenues generated from the state's aquatic lands are generally directed to be used for public benefits, such as shoreline access, environmental protection, and recreational opportunities (RCW 79.90.450). Under current law, the DNR may lease aquatic lands (RCW 79.90.460), and exchange state-owned aquatic lands for privately owned lands (RCW 79.90.457). The DNR may also accept gifts of aquatic lands (RCW 79.90.580). The DNR does not have the express authority to commence an aquatic lands mitigation banking program.

Wetlands mitigation banks are authorized under the Department of Ecology (Chapter 90.84 RCW). Credits from wetlands mitigation banks may be used by state agencies and local governments to compensate for the proposed impacts of a specific public or private project on wetlands (RCW 90.84.040). Credits from wetlands mitigation banks may only be used if all appropriate and practicable steps have been made to minimize environmental impacts, there is no opportunity for on-site compensation, and the credits represent the creation, restoration, or enhancement of wetlands in close proximity (RCW 90.84.050).

The DNR has the duty to report to the Legislature each session any recommendations for statutory change relating to the handling of public lands that is deemed advisable (RCW 79.10.010).

Summary of Bill:

Mitigation banking authority

The DNR is given the authority to conduct a mitigation bank pilot project. Under the pilot project, the DNR could enter into a mitigation banking agreement with other public or private entities to develop and manage a single mitigation bank located on state-owned aquatic lands. Once developed, the aquatic lands where the bank is located would not be available for other uses that compromise the ecological functions of the bank site.

As a requirement for operating the mitigation bank, the DNR, along with its mitigation banking partners, must develop a management plan for the pilot bank. The management plan must be approved through either the state or federal regulatory mitigation process, in addition to the applicable city or county where the bank is located, and include details on the long-term management goals and the costs associated with management of the bank site. Expenses for the development of the management plan are the responsibility of the DNR and its partners.

The DNR is prohibited from requiring a third-party to buy mitigation bank credits as a condition for leasing other aquatic lands. All participation in the banking pilot must be voluntarily agreed to by both the DNR, the banking partner, and the third-party purchasing the mitigation credits.

Mitigation bank endowment

An endowment must be created for the pilot mitigation bank by either the DNR or its banking partner. The endowment's purpose is to generate funds for the long-term monitoring, maintenance, and management of the pilot bank. The amount of money necessary for the endowment must be established by the DNR, documented in the management plan, and approved through the regulatory process. This amount must be based on the specific conditions of the bank site and the terms of the long-term management plan. Long-term management responsibility will not be assumed by the DNR until the money necessary to create the endowment has been determined.

The selling of mitigation bank credits

Once the pilot mitigation bank is established, the DNR may sell and receive revenue from mitigation bank credits. The economic value of the mitigation credits are to be determined jointly by the DNR and its partners, and may include both the costs associated with making the necessary habitat improvements and value of the actual use of the state-owned aquatic lands. Mitigation credits are not allowed to be sold at less than market value.

Mitigation bank accounting

Two new non-appropriated accounts are created: the Aquatic Lands Compensatory Mitigation Endowment Account (endowment account) and the Aquatic Lands Compensatory Mitigation Management Account (management account). The endowment account is managed by the state investment board, and receives all money received by the DNR for the purposes of establishing a long-term endowment.

The principal in the endowment account is irreducible, and revenues from investments must be dispersed into the management account in amounts equal to the costs for managing the pilot site. The management account is then used to fund the department's long-term monitoring, maintenance, and management of the pilot site.

Revenue from the sale of mitigation bank credits are deposited in differing proportions into the Aquatic Lands Enhancement Account and the Resource Management Cost Account, or distributed to certain local governments.

Legislative reports

The department is required to submit a report to the Legislature in 2010 regarding the status of the pilot project. The report must detail regulatory certification, management plan development, service area determination, credit determination, valuation, sales, and information on the status of the endowment account.

Appropriation: None.

Fiscal Note: Requested on 1/25/05.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.